(3)

C.S. 100 (1)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

W.P. NO.3475/2004

PETITIONER : Smt. Ilishwa Lakra, W/o. Mahendra Gupta, aged about 45 years, R/o. of Tahsil Pratappur, District Surguja, Chhattisgarh

VERSUS

RESPONDENTS :

1. The State of Chhattisgarh, Through: Secretary, Tribal Development Deptt., D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh
2. The Assistant Commissioner, Tribal Welfare Department, Ambikapur, District Surguja, Chhattisgarh
3. The Collector, Ambikapur, District Surguja, Chhattisgarh
4. The Chief Executive Officer, Zila Panchayat Ambikapur, District Surguja, Chhattisgarh
5. The Block Education Officer, Surguja, District Surguja, Chhattisgarh

P.R. No. 3216/3/04 Presented by Shri M.V. Paramkar dated 22-9-04

RECEIVED COPY 22/9/04 Clerk to A.G. Bilaspur

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITION OF INDIA

AFR (46)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 3475 of 2004

Petitioner — Smt. Ilishwa Lakra

Versus

Respondents — The State of Chhattisgarh & others

Post for order on 6th May, 2006.

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 3475 of 2004

Petitioner — Smt. Ilishwa Lakra

Versus

Respondents — The State of Chhattisgarh & others

Shri Manoj Paranjpe, Advocate for the petitioner.

Smt. Anju Ahuja, Deputy Govt. Advocate for the Respondents No. 1, 2, 3 and 5.

None for the Respondent No.4.

ORDER

(6th May 2006)

This order of the Court was passed by Justice Satish K. Agnihotri.

1. The petitioner by way of this petition is challenging the validity of the transfer order dated 31.7.2004 (Annexure P/9), whereby the petitioner was transferred along with several others from the post of Hostel Warden of Post Metric Girls Hostel, Pratappur to the Middle School Kanchanpur, Prem Nagar, Surguja.

2. Learned counsel appearing for the petitioner submits that the impugned transfer is bad in law and illegal on the ground, firstly, that the impugned order was passed in malafide exercise of powers, not due to the administrative exigency nor in the public interest and secondly, that the petitioner was transferred earlier on 14.7.2004 and the second transfer order dated 31.7.2004 amounts to frequent transfer.

3. The petitioner has alleged malafide on the ground that the petitioner was earlier suspended on certain allegations of misconduct and after enquiry the petitioner was exonerated from the alleged misconduct

and the suspension was consequently revoked on 12.5.2003. According to learned counsel for the petitioner the impugned transfer order was passed at the instance of those persons, who had made allegations of misconduct against the petitioner earlier, which resulted into the exoneration from the alleged misconduct.

4. It is not proved by any other document or any other conduct of the persons who were allegedly instrumental in getting the petitioner transferred. Learned counsel has not disclosed even names of the persons, who have made complaints and the impugned transfer order was passed at their complaints. The allegation is as vague as it could be without being supported by any documents and as such, the same deserves to be rejected. One or two transfer order passed in a short period does not amount to frequent transfers so as to vitiate the transfer order. The transfer of the petitioner was made along with several others due to administrative exigency in public interest, as is clear from the impugned transfer order.

5. The respondents have clearly stated in their reply as under:-

> "It is again reiterated that the transfer order has been issued due to administrative exigency and no political interference or any other consideration involved in issuing the impugned order of transfer. As regards payment of salary for the period July 2003 to 8-1-2004, the petitioner was absent from duties and for this reason she was not paid her salary etc. In this regard it is submitted that absent period of the petitioner shall be regularized as and when she applies for regularization of her absent period and thereafter only necessary orders with regard to payment of salary to the petitioner may be passed."

6. The Supreme Court in the catena of decisions, mainly in the case of E. P. Royappa Vs. State of Tamil Nadu, A.I.R. 1974 S.C. 555 K. Narayanan & others Vs. State of Karnataka & others A.I.R. 1994 S.C. 55, B. Varadha Rao Vs.State of Karnataka & others, A.I.R. 1986 S.C.

1955, Rajendra Roy Vs. Union of India, A.I.R. 1993 S.C. 1236, State of U.P. & another Vs. Siya Ram & another, (2004) 7 S.C.C. 405, Union of India & others Vs. Janardhan Debanath & another, (2004) 4 S.C.C. 245, State of U.P. & others Vs.Gobardhan Lal, 2004 A.I.R. SCW 2082, has clearly settled the position of law that the transfer is a condition of service and necessary in the public interest and efficiency in public administration. The decision of the employer should not be substituted in the interest of the administrative exigency of the service, except in the case of malafide exercise of powers or violation of any statutory Rules. The impugned order in the present petition is passed neither in the malafide exercise of powers nor in violation of statutory provisions of law nor there was any complain about competence of the authority. The impugned transfer order is passed in the administrative necessity.

7. In view of the above, I do not find any justification in interfering with the transfer order dated 31.7.2004 (Annexure P/9).

8. With regard to the payment of arrears to the petitioner, the respondents have admitted in their reply that the absent period of the petitioner between July, 2003 to 8.1.2004 would be regularized as and when the petitioner applies for regularization for her absent period. Hence no order is necessary in this regard.

9. In the result, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur